UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

S. GREGORY HAYS, Receiver for Mobile Billboards of America, Inc., California Mobile Billboards, et al.,	)	
Plaintiff,	)	MISC. CASE NO: 5:07-MC-00037
vs.	)	CIVIL ACTION FILE No. 1:06-CV-0754 (CAP) (Pending in the United States District Court for the Northern District of Georgia, Atlanta Division)
PAUL, HASTINGS, JANOFSKY & WALKER LLP,	)	
Defendant.	)	

PAUL, HASTINGS, JANOFSKY & WALKER LLP'S OPPOSITION TO NON-PARTY MICHAEL LOMAS'S MOTION TO STAY, MOTION FOR PROTECTIVE ORDER, AND MOTION TO QUASH SUBPOENA

Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"), defendant in the civil case styled *Hays v. Paul, Hastings, Janofsky & Walker LLP*, Civil Action No. 1:06-0754-CAP, pending in the United States District Court for the Northern District of Georgia, respectfully requests this Court deny non-party Michael Lomas's Motion to Stay, Motion for Protective Order, and Motion to Quash (collectively, "Motions").

As an initial matter, Paul Hastings is no longer requiring Mr. Lomas to produce documents in response to the subpoena. After receipt of the motion papers filed by Mr. Lomas, counsel for Paul Hastings conferred with Mr. Lomas's counsel and agreed to release Mr. Lomas from his obligation to produce documents, given the representation to this Court that Mr. Lomas had no responsive documents in his possession. Paul Hastings' opposition, therefore, concerns

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only Mr. Lomas's obligation to appear for deposition. Because the deposition imposes no undue burden on Mr. Lomas, the Motions should be denied.

ARGUMENT

The party seeking to quash a subpoena bears a "heavy burden to show compliance with the subpoena would be unreasonable and oppressive." *Joiner v. Choicepoint Servs., Inc.*, 2006 WL 2669370, No. 1:05CV321, at *4 (W.D.N.C. Sept. 15, 2006) (not reported) (internal punctuation omitted) (quoting *Composition Roofers Union Local 30 v. Gravelry Roofing Enter.*, 160 F.R.D. 70, 72 (E.D. Pa. 1995)). *See Wiwa v. Royal Dutch Petroleum Co*., 392 F.3d 812, 818 (5th Cir. 2004) (burden on party moving to quash); *Linder v. Dep't of Defense*, 133 F.3d 17, 24 (D.C. Cir. 1998) (same). For a number of reasons, Mr. Lomas has failed to meet this burden.

There can be no undue burden on Mr. Lomas in his appearing for a deposition in Raleigh. Prior to issuing the subpoena, counsel for Paul Hastings conferred with Mr. Lomas's attorney on the time and place for the deposition. Counsel for Paul Hastings thereafter issued the subpoena for the time and place most convenient for Mr. Lomas and his attorney. Indeed, the deposition opposed by Mr. Lomas as imposing an "undue burden" is scheduled to take place at his attorney's office, located a mere three-and-a-half mile drive from the halfway house in which he is currently located. Moreover, Paul Hastings has already provided Mr. Lomas his witness fee and mileage reimbursement for appearing at the deposition. Therefore, to the extent the Motions are based on any undue burden, financial or otherwise, they should be denied. *See Amer. Sec. Ins. Co. v. McDonald*, No. 5:07-MC-5, 2007 WL 1853857, at *1, (W.D.N.C. June 26, 2007) (slip op.) (party's ability to alleviate burden and expense of travel weighed in favor of enforcing subpoena).

Mr. Lomas also cited the parallel criminal proceedings as the basis for quashing the subpoena, yet he failed to demonstrate how the civil proceeding will interfere in any way with the criminal proceeding. *See SEC. v. Dresser Indus. Inc.*, 628 F.2d 1368, 1377 (D.C. Cir. 1980) (parallel investigations should not be blocked absent "'special circumstances' in which the nature of the proceedings demonstrably prejudices substantial rights of the investigated party"). Mr. Lomas merely states that because there are ongoing criminal and civil proceedings, the subpoena should be quashed and his deposition should be postponed. (*See* Lomas Mot. to Quash at 13.) It is incumbent upon Mr. Lomas to demonstrate how he will be prejudiced by discovery in the civil case. *See Dresser*, 628 F.2d at 1377. The mere existence of parallel criminal and civil proceedings without more is insufficient grounds for quashing a subpoena. *See Dresser*, 628 F.2d at 1388-89 (denying motion to quash SEC subpoenas despite pending criminal charges in the same matter). Notably, the United States District Court for the Northern District of Georgia, the court in which the civil case is pending, has entered an order permitting discovery in the civil case to proceed notwithstanding the pending criminal proceedings against key witnesses in the case, including Mr. Lomas. (*See* Order, July 17, 2007, at 3-6, attached hereto as Exhibit A.)

Indeed, Paul Hastings has a significant interest in obtaining discovery from Mr. Lomas and should be allowed to proceed with his deposition. Michael Lomas was the founder and principal of Mobile Billboards of America ("MBA"). As the person ultimately responsible for MBA and its operations, Mr. Lomas is likely to have discoverable information about the central issues in the case essential to Paul Hastings' defense including, among other things: the scope and terms of Paul Hastings' engagement; the substance of the securities advice that Paul Hastings did or did not provide to MBA; the extent to which Mr. Lomas sought and relied upon

Paul Hastings' advice; Mr. Lomas's understanding of the business operations of MBA and its affiliates; and the information provided to Paul Hastings regarding the business operations of MBA.

The United Stated District Court for the Northern District of Georgia has already determined that Paul Hastings has shown sufficient good cause to take Mr. Lomas's deposition. While Mr. Lomas was still in prison, Paul Hastings moved for leave of court, pursuant to Federal Rule of Civil Procedure 30(a)(2), to depose Mr. Lomas. The District Court recently issued an order granting Paul Hastings leave to take Lomas's deposition, finding that his deposition would be consistent with the principles stated in Rule 26(b)(2) of the Federal rules of Civil Procedure. (*See* Order, August 3, 2007, attached hereto as Exhibit B.)

CONCLUSION

For the foregoing reasons, Paul Hastings respectfully requests that this Court deny the Motion to Stay, Motion for Protective Order, and Motion to Quash Subpoena Delivered to Non-Party Michael Lomas.

This 7th day of August, 2007.

/s/ Thomas W. Curvin

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CERTIFICATE OF SERVICE

I hereby certify that on August 7th, 2007, I served the foregoing **OPPOSITION TO NON-PARTY MICHAEL LOMAS'S MOTION TO STAY, MOTION FOR PROTECTIVE ORDER, AND MOTION TO QUASH SUBPOENA** via facsimile, electronic mail, and U.S. mail to the parties listed below.

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